

Washington's "Stay Home, Stay Healthy" Order Permits Only Limited Categories of Construction to Continue

NOTE: As of April 2, 2020, Governor Inslee has issued [Proclamation 20-25.1](#) and extended the Stay Home, Stay Healthy Order in Washington State to be effective through May 4, 2020.

Following several other states' response to the COVID-19 pandemic, including New York and California, on March 23, 2020, Governor of Washington Jay Inslee issued a statewide order, [Proclamation 20-25](#) - Stay Home, Stay Healthy, requiring all Washingtonians to stay at home unless engaging in essential activities or working in essential business services. Unless exempted, all non-essential businesses must cease operations, starting at midnight on March 25, 2020; the prohibition is in effect until midnight on May 4, 2020, unless extended. Violators may be subject to criminal penalties. On March 25, 2020, Governor Inslee published a memorandum entitled "Construction Guidance - Stay Home, Stay Healthy Proclamation (20-25)" - (the March 25 guidance). This update addresses the extent to which the order and March 25 guidance exempts construction projects.

Construction Related to Essential Business Services

The order exempts certain essential businesses and essential employees, as described fully in the order's description of "Essential Critical Infrastructure Workers." Essential businesses include the following industries: healthcare, emergency services, food and agriculture, energy, water and wastewater, transportation and logistics, communications and information technology, other community-based government operations and essential functions, critical manufacturing, hazardous materials, chemical, and defense. Construction workers supporting these essential businesses are exempt from the order:

Construction workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction) for all essential facilities, services and projects included in this document, and for residential construction related to emergency repairs and projects that ensure structural integrity.

Construction work is allowed to continue in order to ensure structural integrity and to perform residential construction related to emergency repairs. Workers, such as plumbers, electricians, exterminators, and other service providers, who provide services that are necessary to maintaining the safety, sanitation, and essential operation of construction sites and construction projects, may continue to operate.

Commercial and Housing Construction Projects Generally Are Not Permitted to Continue

While the wording of the order is ambiguous about its inclusion of new housing construction in the exemptions, the March 25 guidance is not.

The March 25 guidance, a one-page memorandum, states:

In general, commercial and residential construction is not authorized under the Proclamation because construction is not considered to be an essential activity.

However, an exception to the order allows for construction in the following limited circumstances:

1. Construction related to essential activities as described in the order;
2. To further a public purpose related to a public entity or governmental function or facility, including but not limited to publicly financed low-income housing; or
3. To prevent spoliation and avoid damage or unsafe conditions, and address emergency repairs at both non-essential businesses and residential structures.

To that end, it is permissible for workers who are building, construction superintendents, tradesmen, or tradeswomen, or other trades including, but not limited to, plumbers, electricians, carpenters, laborers, sheet metal, iron workers, masonry, pipe trades, fabricators, heavy equipment and crane operators, finishers, exterminators, pesticide applicators, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC technicians, painting, moving and relocation services, forestry and arborists, and other service providers to provide services consistent with this guidance.

All construction activity must meet social distancing and appropriate health and worker protection measures before proceeding.

Halting construction, particularly residential construction, marks a divergence from the approach taken by other states' shelter-in-place orders. Other states have exempted housing to ensure that supply in markets already facing affordable housing crises are not further constrained.

Public Entity or Governmental Function or Facility Construction Is Exempt

The order provided a clear exemption for essential facilities, services, and projects that were included in the "Essential Critical Infrastructure Workers" list incorporated in the order. The March 25 guidance clarifies and confirms that public entity and governmental function and facility construction may continue, including the relatively narrow category of "publicly financed low-income housing."

Minimum Operations for Non-Essential Business

The order allows non-essential businesses to continue minimum basic operations, and the March 25 guidance does not limit this provision. Pursuant to the order, "minimum basic operations" are considered:

[t]he minimum activities necessary to maintain the value of the business' inventory, preserve the condition of the business' physical plant and equipment, ensure security, process payroll and employee benefits, facilitate employees of the business being able to continue to work remotely from their residences, and related functions.

For construction projects, this should include, among other things, maintaining site security, avoiding spoilage of materials, and administrative work necessary to preserve the essential functions of the business and the integrity of structures. The order in no way limits the type of work that can be done remotely.

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